Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
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REPLY COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

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SUMMARY

Sinclair agrees with the many commenters who observe that the NPRM's stated goal to repurpose the maximum amount of spectrum for mobile broadband is contrary to the Spectrum Act. The FCC's auction is intended to allow the market to determine the optimal balance of allocations. Attempts to skew the results towards reallocating as much spectrum as possible would exceed the FCC's authority under the Spectrum Act and needlessly disenfranchise consumers.

Many commenters protest that the Commission's NPRM does not even acknowledge the interests of viewers of broadcast television service. Those viewers are among the most important stakeholders in this proceeding, and preserving television service to those viewers absent demonstrated demand for reallocated spectrum should be a core goal of the proceeding.

Some commenters object to the NPRM's bias towards paired FDD frequency blocks that are tailor-made for the largest incumbent wireless operators. FDD's technical antecedent is symmetrical voice service. Growth in FDD services should be accommodated, but not to the exclusion of other architectures, including broadcast-type services. A diversity of technologies, enabled by a diversity of allocations, provides a more resilient, varied and efficient communications infrastructure for America.

Several commenters note that the NPRM gives no attention to the bramble of questions surrounding the actual repacking of potentially hundreds of television stations without provision of any transition channels. The mechanics of repacking will directly affect the total cost of repacking and thus the success or failure of the entire process, and they must be addressed thoroughly and in advance. Sinclair supports commenters who caution the FCC to anticipate future broadcast transition to new technologies both in making new allocations and in repacking.

The public undeniably has a very strong interest in a band plan that permits the broadcasting service to evolve and improve over time.

Several parties share Sinclair's view that the Commission should seize the opportunity of repacking to facilitate a phased and permissive introduction of a new television broadcast standard that can itself become an integral part of the mobile ecosystem. The FCC should grant relief from the existing broadcast services rules liberally before, during, and after repacking to permit broadcasters to introduce improved services. And the FCC should begin now to examine receiver performance -- a perfect example of nonrecurring costs yielding perpetual benefits.

Many parties are concerned about the lack of transparency in the FCC's auction and repacking software and models. Sinclair agrees that the public cannot meaningfully comment on the FCC's auction and repacking plan if the software that putatively implements that plan is concealed from public scrutiny. If the software is not released, then the entire process will be vulnerable to challenges based on fundamental failures to comply with the requirements of notice and comment rulemaking and the Spectrum Act's "all reasonable efforts" requirement.

The comments reflect widespread agreement that all ownership combinations that comply with the FCC's ownership rules today should be grandfathered post-auction. Sinclair believes the ownership rules are inextricably linked to the incentive auctions themselves. Given the aggressive time frame for the auctions and the FCC's historical inability to complete its quadrennial reviews in a timely manner, it is critical that the FCC consider the long term impact of the auctions on its ownership rules in this proceeding.

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Sinclair Broadcast Group, Inc. ("Sinclair") has reviewed initial comments filed in this docket and offers the comments below in reply. Because of the large number of substantive comments in this docket Sinclair will limit its replies to the areas in which Sinclair has a particular interest or perhaps a different perspective.¹

I. The Goal of the Proceeding is Not to Repurpose the Maximum Amount of Broadcast Spectrum; Protection of OTA Viewers Should Be a Core Goal

Sinclair agrees with other commenters who observe that the NPRM's² stated goal to repurpose the maximum amount of spectrum for mobile broadband is contrary to the Spectrum Act.³ Congress has authorized the FCC to undertake one of its most sweeping projects in decades – the reallocation, through voluntary incentive auction, of potentially dozens of megahertz of spectrum from television broadcasting service to "flexible use" licenses that would be auctioned to the highest bidder. Unlike the digital transition completed in 2009, in which protecting viewers and ensuring a seamless changeover were primary goals, the Commission's NPRM assigns essentially no weight to these critical considerations just four years later. This was not the stated or implied

¹ Sinclair fully supports the comments of the National Association of Broadcasters ("NAB") in every respect. NAB's comments do not address every issue that Sinclair believes should be priorities for the Commission, but Sinclair supports the NAB views and recommendations on issues that the NAB comments address.

² In the Matter of Expanding Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking, FCC 12-118 (rel. Oct. 2, 2012).

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 3203, 126 Stat. 156, 193 (2012).

intent of Congress when adopting the Spectrum Act. Sinclair's opening comments identified this glaring omission, and many other commenters also expressed great concern that the FCC has overlooked what should be a core goal of the process. NAB, for example, notes that the NPRM omits to address protection "of the many millions of television viewers so that both broadband and broadcast consumers can benefit from the auction."

Sinclair agrees with several commenters who argue that protection of existing broadcast viewers should be a core goal of the proceeding regardless of whether those viewers rely on broadcasts that operate with primary or secondary service status. The statute requires as much, and it is the right thing to do. The failure of the NPRM to establish viewer protection as a core goal reflects an unfortunate bias that has no antecedent in established national policy.⁵

Although the Spectrum Act does not give low power television ("LPTV") licensees absolute protection in repacking, that does not mean Congress intended for the FCC to disregard the interests of viewers who rely on the rich variability of programming provided by the thousands of LPTV facilities. LPTV facilities provide crucial service as an extension of primary facilities and support diverse voices and ownership across vast geographic areas not possible with a single licensed full power or Class A facility. The FCC must strive to ensure that these voices can continue to be heard. Certainly, the FCC is not authorized to shut down thousands of LPTV facilities absent demonstrated

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⁴ Comments of NAB, at 3.

⁵ United States Cellular Corporation ("USCC") argues that even in rural markets, where there is no "spectrum crunch" and the demand for repurposed spectrum can be met by repacking alone, the FCC should nonetheless encourage stations to participate if they can bought out for less than the cost of repacking. *See* Comments of United States Cellular Corporation, at 4-8. Presumably, this means USCC also supports displacing low power television stations that provide service to underserved citizens. But the notion that spectrum should be repurposed just because it can be done cheaply is antithetical to the purpose of the incentive auction, which is to allow the market to determine whether there is in fact a spectrum crunch and whether any crunch can be alleviated through market-based rational decisions. USCC's position makes sense only if one accepts the premise – and that premise is wrong – that the purpose of the auction is to reclaim the maximum amount of spectrum at the lowest price. But according to decades of FCC precedent and several decisions by the Courts of Appeals, the public interest strongly demands the largest number of television stations possible for each market. Extinguishing broadcast voices just because it can be done cheaply, especially when there is no unmet demand for repurposed spectrum, would be a perverse approach that is not authorized by the Spectrum Act.

demand for reallocated spectrum in the areas in which they operate. Many LPTV facilities operate in areas where local television service is scarcer than broadband spectrum because the cost of facilities and programming, not lack of spectrum, is the gating factor in service provisioning.

II. The FCC Should Allocate a Variety of Licenses in the Repurposed Broadcast Spectrum

A number of commenters argue, directly or indirectly, that the purpose of the auction is to serve the narrow interests of today's subscription-based commercial mobile wireless services. The NPRM itself directly reflects this bias.⁶ For example, USCC argues that the Commission should reclaim the maximum amount of spectrum possible, apparently without regard to demand.⁷ Those commenters make a variety of proposals that would place the interests of the existing wireless industry ahead of the interests of consumers. For example, Verizon Wireless argues that the FCC should adopt a band plan that would maximize the value of the reallocated spectrum for the wireless industry.⁸ T-Mobile and other commercial mobile wireless carriers expressly argue that the auction should be designed to serve their own private commercial interests.⁹ USCC also argues that the FCC should encourage stations in rural areas to exit because the cost of buying them out in some cases can be less than the cost of repacking.¹⁰

Sinclair believes rules biased towards repurposing spectrum regardless of demonstrated demand would violate the Spectrum Act, and that the Commission would be wrong to tailor-make the forward license blocks simply so that they appeal only to existing, subscription-based, FDD and Time Division Duplex ("TDD") mobile wireless operators. As Sinclair argued in its opening comments, the purpose of the auction is to allow the market to determine how our nation's spectrum

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⁶ NPRM at ¶127 ("Nonetheless, for band planning purposes we expect that the most likely technologies that will operate on this spectrum are 3G and 4G Frequency Division Duplex ("FDD") technologies").

⁷ See Comments of USCC, at 4-8.

⁸ See Comments of Verizon Wireless, at iv.

⁹ See, e.g., Comments of T-Mobile USA, Inc., at 15; Comments of CTIA, at 8.

¹⁰ See Comments of USCC, at 8.

assets are most gainfully deployed. 11 The Spectrum Act does not mandate or even suggest that the Commission should design the auction to benefit the incumbent wireless operators by repurposing the greatest amount of spectrum possible or by allocating the reclaimed spectrum in a manner that makes it certain that spectrum will be acquired by incumbent FDD and TDD wireless operators and used to provide the same homogenous and increasingly undifferentiated service they provide today.

Notably, at least one insurgent wireless carrier is concerned with the NPRM's overt bias towards the types of allocations favored by legacy FDD wireless carriers that developed mobile broadband service in the image of their legacy voice services, which by their nature required symmetrical forward and return links. 12 Clearwire, which has built an extensive TDD mobile broadband network, notes that unpaired assignments are better suited to the asymmetric data flow of mobile broadband. A diversity of technologies, enabled by a diversity of allocations, provides a more resilient, varied and efficient communications infrastructure for America.

To be clear, Sinclair does not contend that high power, unpaired allocations are fundamentally superior to any other kind of allocation. But they should be a part of the mix. A lack of diversity in types of allocations will necessarily limit diversity in the types of digital services that are, or might be, made available and will constrain the business models that support those services. The universe of digital services is growing, not shrinking. The FCC should not expect, and certainly should not foster, a monoculture of undifferentiated digital services. Allowing broadcasters to operate with a mobile-friendly transmission standard would be a major step in the right direction. But the FCC should also promote diversity by allocating different types of spectrum blocks for the forward auction.

See Comments of Sinclair, at 11.
 See Comments of Clearwire Corporation at 6.

The wireless carriers' comments to the contrary are another manifestation of the incorrect and self-serving assumption that the purpose of the incentive auction is to create more spectrum for the legacy business plans and technical facilities of the incumbent commercial mobile wireless carriers. The Spectrum Act is intended to determine whether the market believes some of the spectrum used by today's oppressively regulated broadcast television service might be more economically deployed for the provision of services that are essentially unregulated. As Sinclair pointed out in its initial comments, the FCC should not custom build the supposed "flexible use" licenses for the narrow purpose of today's subscription based commercial wireless industry. Both the market and technology are evolving. The FCC can and should do better than simply issue only copycat licenses that suit the purposes of incumbents and lock out multiplatform competition. And the Commission should reject calls to reclaim as much spectrum as possible without regard to demonstrated demand. This goal only incentivizes the Commission to cut corners and cram broadcasters into the smallest band of spectrum that might withstand judicial review. It cannot be squared with the public interest. The Commission can and must do better.

III. The FCC Must Confront, Consider and Address How Repacking and Future Transitions to New Technical Standards Can Be Accomplished Without Transition Channels

The NPRM gives no attention to the bramble of questions surrounding the actual transition of hundreds of television stations without provision of any transition channels. As many commenters point out, the FCC must directly and fully address how the repacking will actually be accomplished. The mechanics of repacking, practically speaking, may be the greatest challenge of the auction and not just because of the severe disruption to tens of millions of OTA viewers. The mechanics of repacking will directly impact the total cost and time to implement any repacking scheme and thus success or failure of the entire process.

Beyond repacking, the post-auction band plan must recognize that the technical platform that provides broadcast service can and must evolve over time to provide better service to consumers, and it should anticipate and accommodate that service evolution. Future transitions to support new technical platforms will be more challenging still, with even less spectrum available in the broadcast service. As Sony's comments emphasize

> modern broadcast technologies are not backward-compatible with the current ATSC standard. To avoid the consumer disruption that would result from a "flash-cut" from the current standard to the next, [the Commission must] to make an appropriate provision for transition spectrum in its band planning.¹³

Further, as International Broadcasting Network states, "the Commission should not impede future advances in television technology in order to accommodate the unreasonable spectrum demands of wireless companies." ¹⁴ The objective of the auction must be to serve the interests of the public through an appropriate balance of allocations. And the public undeniably has a very strong interest in a band plan that permits the broadcasting service to evolve and improve over time.

IV. The Commission Should Take this Opportunity to Facilitate a Transition to a New **Television Broadcast Standard**

Sinclair's opening comments proposed that the FCC facilitate and permit, but not require, stations to deploy the next generation television broadcasting standard at the time of repacking. None of the comments filed in this proceeding are directly inconsistent with Sinclair's proposal (although comments imploring the FCC to speed recklessly through the reallocation without due care for the health and vitality of the television broadcast service are thematically opposed). In contrast, several thoughtful comments acknowledge the importance of giving due consideration to

Comments of Sony Electronics Inc., at 6.
 Comments of International Broadcasting Network, at 2.

future broadcast service evolution in the implementation of incentive auctions.¹⁵ Tribune Company argues persuasively that

to encourage innovation and competition, the Commission must preserve maximum flexibility for post-auction operations on both the remaining broadcast spectrum and on the spectrum reclaimed for wireless operations. To make the incentive auctions a truly forward looking process, the Commission should permit broadcasters that continue operating to experiment with new services and transmission standards. The Commission also should not foreclose the use of reclaimed spectrum for broadcast services in view of the likely convergence of broadcast and wireless networks.¹⁶

Oded Bendov argues that the FCC should "encoura[ge] DTV stations to experiment with new modulation/compression formats and impose receiver standards, both as basic elements of an appropriate, modern television broadcast service".¹⁷

Sinclair supports these views fully. As Sinclair's opening comments noted, if the Commission is to re-work the UHF band to facilitate mobile services because that band is particularly well-suited to mobile services, the Commission should not accept a solution that, in effect, requires broadcasters (who will continue to operate in large portions of the UHF band) to provide a core service that cannot be optimized for mobile reception. The best possible and most spectrally efficient DTV service requires technical improvements on both ends of the channel – an updated transmission standard, and achievable receiver performance standards. These go hand-in-hand, not just technically, but also practically. A mobile and indoor-friendly standard will drive

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¹⁵ See, e.g., Comments of NAB, at 46 (maintaining separate spectrum blocks nationwide is crucial to maintaining room for broadcast growth and innovation).

¹⁶ Comments of Tribune Company, at 21.

¹⁷ "Spectrally Efficient UHF and VHF DTV Broadcasting" by Oded Bendov, submitted in Docket 12-268 (February 6, 2013). Mr. Bendov also explains that present-day DTV "tuner on a chip" receivers "do not include a tracking filter that insulates the desired channel from undesired channels." He notes that "In today's environment, DTV channels are sparsely spaced and such chips have performed passably. That will no longer be the case if DTV channels are to be packed contiguously." *Id.* at 4. The abysmal performance of today's DTV receivers is but one of many factors the FCC must consider in its repacking models. Although receiver makers inevitably will complain about the imposition of reasonable performance requirements where none existed before, the need for better receivers in all services is now widely recognized, and the marginal cost of these improvements in a consumer environment where tens or hundreds of millions of devices are made, is infinitesimal.

massive device penetration, making the marginal cost of improved DTV receivers negligible. Better receiver requirements are perfect examples of nonrecurring costs yielding perpetual benefits with a more effective delivery platform.

The Spectrum Act permits the FCC to grant service rule waivers to allow broadcasters that forego reimbursement of repacking costs. Sinclair believes a very broad application of waivers is in the best interest of all stakeholders. Unshackling broadcasters from oppressive, decades-old regulations is the only way to truly assess how the market prefers spectrum to be allocated to different services. Other commenters agree. Univision correctly notes that while the statute authorizes the FCC to grant waivers to stations foregoing relocation costs, nothing prevents the FCC from granting blanket waivers, 18 and doing so would serve the public interest. Neither the FCC nor incumbent carriers should fear that broadcasters will attempt to compete in mass to provide predominantly non-broadcast services. Sinclair has undertaken extensive modeling and believes that a properly deregulated television broadcast service would provide far greater public benefits and economic returns per allocated megahertz of spectrum than would use of broadcast allocations to provide a competing broadband service. Again, America deserves a variety of advanced digital services efficiently provided by a mix of appropriate technical platforms by licensees that are permitted to respond to market demands.

Tribune also recognizes the other, critical half of the equation: the FCC should not custombuild the forward auction licenses – certainly not all of the forward auction licenses – so that they are attractive only to the largest incumbent commercial wireless service providers. ¹⁹ Consistent with Sinclair's comments, which urged the Commission to allocate some unpaired, higher power

See Comments of Univision Communications Inc., at 19-20.
 See Comments of Tribune, at 22-23 (noting that reallocation alone will not solve any spectrum shortage and that the forward auction should permit broadcast-type services).

blocks, Tribune asks the Commission to permit broadcast services in some bands and to seek like kind exchange tax treatment for tendering broadcasters that also participate in the forward auction. Tribune's proposal is a sure way to allow the market to express the highest and best use for the existing television spectrum. Apples should be compared to apples. It is nonsensical to weigh the "value" of heavily regulated television broadcast service against unregulated mobile service based on the price paid at auction, when it is universally acknowledged that the constraints of the regulations themselves severely depress the cash value of the spectrum when used for broadcasting.

V. The FCC Should Release the Source Code of all Software Used to Determine When and Whether A Reverse Auction Can Close

Sinclair's opening comments noted that the NPRM, by its terms, establishes incentives for the FCC staff to close an auction based on overly optimistic assumptions about its ability to repack stations with full protection of the statute (including service area protection and full reimbursement of repacking costs).²⁰ Sinclair argued that the FCC or the forward auction winners should bear the risk that a repacked station cannot be given a replacement channel that complies with the Spectrum Act's protection requirements.²¹

Many other parties share Sinclair's concern about the FCC's development and use of the modified OET-69 "TV Study" and other auction software and, in particular, its repacking model.

NAB, Cohen, Dippell and Everist, Belo Corp., ²² LIN Television ²³ and others argue that the FCC must release its auction/repacking software well in advance of the reverse auction for public examination and comment. Cohen, Dippel and Everist correctly state that the FCC must release the

²⁰ See Comments of Sinclair, at 11-12.

²¹ Sinclair also argued that the FCC may not reduce the service area or population served of non-relocated stations by repacking other stations too tightly around them. *See* Comments of Sinclair, at 10.
²² *See* Comments of Belo, at 5.

²³ See Comments of LIN Television Corporation d/b/a LIN Media, at 2-3.

source code to permit a full and fair evaluation.²⁴ Sinclair agrees that the public cannot meaningfully comment on the FCC's auction and repacking plan if the software that putatively implements that plan is concealed from public scrutiny. If the software is not released, then the entire process will rightfully be vulnerable to challenges based on fundamental failures to comply with the requirements of notice and comment rulemaking.

But even after public review and comment on the software, the FCC still may not place the burden of an inadequate replacement channel on any broadcaster. The FCC will inevitably make subjective determinations as to when repacking can be accomplished in various closing scenarios. The FCC can improve its chances of a successful closing and repacking by disclosing and seeking public comment on its proposed repacking plans at the close of each round of bidding, as Sinclair has proposed. But other than the exceptional circumstances contemplated in the Spectrum Act, ²⁵ which cannot be addressed by reasonable efforts systemically or in each individual case, the FCC must ensure that broadcasters are held harmless in repacking.

A number of parties have advocated the use of guard bands and/or the duplex gap for unlicensed services. Sinclair recognizes the enormous benefits that have been realized from the existing 2.4 GHz unlicensed band. The success of this band underscores Sinclair's central point: that the growing demand for mobile services cannot be met by a one-size-fits-all solution. Sinclair supports unlicensed allocations but believes those allocations should be dedicated to unlicensed service. In any case, if unlicensed service is permitted in guard bands, adjacent licensed operations must be fully protected even under worst case scenarios. And, the FCC's repacking models must account for intensive unlicensed use in any frequencies adjacent to broadcast operations.

 ²⁴ See Comments of Cohen, Dippel and Everist, at 6.
 ²⁵ See Comments of NAB, at 18-28.

VI. The Commission Must Examine the Impact of Incentive Auctions on Its Ownership **Rules and Grandfather Pre-Auction Combinations**

The comments reflect widespread agreement that all ownership combinations that comply with the FCC's ownership rules today should be grandfathered post-auction.²⁶ Verizon Wireless correctly observes that "the results of the auction may have longer term implications for the Commission's multiple ownership and other ownership rules and policies, the Commission can consider further changes to the ownership rules. . . . "27 Sinclair agrees, and believes the FCC should take note when Verizon Wireless, which has no direct stake in broadcast ownership regulation, recognizes that the broadcast ownership rules are due for an overhaul. Verizon Wireless recommends that the FCC review the impact of incentive auctions on the ownership rules in the context of its quadrennial regulatory reviews under Section 202 of the Telecommunications Act. Sinclair believes the issue is inextricably linked to the incentive auctions themselves. Given the aggressive time frame for the auctions and the FCC's historical inability to complete its quadrennial reviews in a timely manner, it is critical that the FCC consider the long term impact of the auctions on its ownership rules in this proceeding.

VII. Conclusion

Sinclair and others have raised important questions about the Commission's reverse auction proposal. We believe the Commission's haste could lead to failure of the one statutorily granted opportunity to conduct an incentive auction of the television broadcast spectrum. We also believe the Commission's NPRM aims far too low, and that the FCC should make more of the television band useful for mobile and other advanced, improved broadcast services by leveraging repacking as an opportunity for all willing broadcasters to deploy a next-generation television standard. We are

²⁶ See, e.g., Comments of Verizon Wireless Comments, at 31. ²⁷ Id. at 31-32.

concerned that that the FCC has not considered adequately, if at all, how a repacking might actually be accomplished without transition channels, or how broadcasters will deploy new technical standards in the future.

In spite of these concerns, Sinclair is optimistic that the Commission will recognize that higher aspirations and a more deliberate approach will lead to a more successful auction. And to be clear, we do not use "deliberate" as a euphemism for delay. Sinclair wants to implement service improvements as soon as possible. We see the unfortunate but inevitable disruption to be caused by repacking as an opportunity to accomplish a major service upgrade without the *additional* disruption that inevitably arises from a transition without transition channels. Sinclair therefore urges the FCC to address the concerns raised by Sinclair and other broadcasters directly, thoroughly, and as expeditiously as reasonably possible so that the auction may proceed and succeed.

Respectfully submitted,

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